

LAKE COUNTY BOARD of ADJUSTMENT
June 12, 2019
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Mary Jensen, Mike McKee

STAFF PRESENT: Jacob Feistner, Tiffani Murphy, Lita Fonda; Wally Congdon

Don Patterson called the meeting to order at 3:32 pm. Jacob requested a change in the agenda order, if it was agreeable to Jeff Gallatin and the Board, since Anne Moran of DNRC (Montana Department of Natural Resources and Conservation) was here for that item and needed to return to Kalispell for another meeting. The agenda adjustment was agreed upon.

ANDERSON/ DNRC VARIANCE—EAST SHORE (3:33 pm)

Tiffani Murphy presented the staff report. (See attachments to minutes in the June 2019 meeting file for staff report.) Pertaining to item 6 on pages 2 and 3, she noted that she and Jacob spoke to Anne Moran yesterday. When the State purchased the property, those boulevard strips may have disappeared. [The State] requested a meeting at a later date with the Lake County Commissioners to discuss this. She suggested amending condition #4 of the staff report to ‘Prior to the issuance of a zoning conformance permit, if deemed necessary by the Lake County Board of Commissioners, an encroachment permit shall be obtained for improvements within the boulevard.’ Regarding #13 on pg. 4 and public comment, Tiffani described a phone call received on 6/10/19 from the neighbor directly to the south, who said verbally he was in favor of the request.

Tiffani responded to questions. With this being state property, the information on when the structures were built was not available to her. The cabin that currently had a holding tank had a bathroom facility. She didn’t know if a new one would be built. The other cabin just had an outhouse. Zoning conformance for expansion of the outside of the cabin was not currently submitted. If this [variance] was approved, just a holding tank would be put in on each lot. These would have to be pumped.

Anne Moran of DNRC commented that they would appreciate the Board of Adjustment’s support relative to the issue on the boulevard. There were some different laws and different issues relative to potential easements for state trust land. The survey they referred to was one that DNRC commissioned. They’d researched it. They would really appreciate the opportunity to visit with Lake County about it and not have their tenants have to go through this hearing process again. They all wanted to get the tenants compliant as quickly as they could. The tenants were already on the agenda for a Board of Health hearing relative to their specific installation also. She also thanked everyone for changing the agenda order.

Mary asked how long these parties had been leasing these properties. Anne replied they’d been tenants long prior to her 15 years with the State. Both tenants’ parents were prior leasees. She noted Susan Anderson represented the leasees. Susan would have some answers, such as how long the cabins had been there. The standard state residential lease was between 15 and 35

years. Statutes and administrative rules allowed the tenants a preference right to renew. Tenants tended to be very long-term on these residential leases. Typically the state could accommodate specific requirements. The state worked with the county and the tenant to make sure they got a good long term resolution in place for installations like this.

Sue Anderson spoke for the leaseholders. One was her husband and the other was his cousin. The dates for the lots [leases] were very close [together]. Lot 5 was initially leased in 1947. The cabin was built in 1948 or 1949. Two small additions had been done, the last of which was done in 1975. The lot 5 cabin had two sinks, which currently drained to a gravel bed underneath the cabin. That was the greywater discharge. They would have to include a toilet and were looking at tiny home options for possibly a shower. They weren't planning to increase the external structure of the cabin. The dates for lot 6 were similar although she didn't know the exact dates. The failed septic was installed in the early 1970's, before the requirements, so this was actually in the 50-foot area. It was an old metal tank. The lid rusted through last summer. It was pumped, drained and filled (with gravel) so lot 6 didn't have functional septic either. It had a shower, 2 sinks and a toilet, which weren't functional since the water hadn't been turned on in the last two years. Cabin 6 was not being used at all. The cousin lived in CA and came up for 2 weeks every year. What they did last summer was to take tubs of water to the sinks of cabin 5 to drain, plus he used his outhouse. Each property had an outhouse. Anne mentioned that they'd be working with the [Environmental] Health director, as they had since day 1. Sue described that the director gave them permission to pump and fill the tank since it was a hazard.

Earl clarified that there was an original tin tank that failed and had been filled in. They were requesting a concrete holding tank for each lot that would be pumped.

Public comment opened: None offered. *Public comment closed.*

Steve offered some changes to consider to support approval:

- Pg. 5, item a, last sentence in 1st italicized paragraph: Change 'that applicants' to 'the applicants' and add 'which may create greater impacts than new holding tanks' to the sentence end.
- Pg. 6, item b, after the 1st italicized sentence: Add two new sentences: 'If the lots were undeveloped today, any development could be restricted. However both lots were developed with the existing cabins.' Either 'in the late 1940's' or 'before the Lake County Lakeshore Protection regulations or the Lake County East Shore Zoning Regulations' could be appended to the end of the 2nd new sentence. Mike thought item [c on pg. 6] covered that. Steve said it didn't talk about the development on the lots.
- Pg. 7, item f: Add vii to say the greywater use is connected to the holding tanks and the holding tanks are cleaned at regular intervals and properly maintained. Steve asked if the holding tanks had alarms. Tiffani said the holding tanks would be designed by a registered sanitarian or an engineer. They were required to have agreements with a pumping facility and have alarms and so forth. Environmental Health would require them to submit all of that prior to the issuance of a permit.
- On pg. 8, condition #4: Include Tiffani's suggested wording of 'Prior to the issuance of a zoning conformance permit, if deemed necessary by the Lake County Board of Commissioners, an encroachment permit shall be obtained for improvements within the boulevard.'

- On pg. 8, condition #6: Steve and Mike each suggested wording to handle greywater. Jacob thought Environmental Health would cover that. He hated to include regulations that were not something that Planning enforced. The Board agreed.

Motion made by Mike McKee, and seconded by Mary Jensen, to approve the variance with staff recommendations as amended. Motion carried, all in favor.

SPRUNK CONDITIONAL USE—FINLEY POINT (4:02 pm)

Tiffani Murphy noted that agent Jeff Gallatin was here. She presented the staff report. (See attachments to minutes in the June 2019 meeting file for staff report.)

Jacob clarified that at the April meeting, public comment was taken even though the item was cancelled. Steve asked for a summary of the comments received for the previous application. Tiffani outlined the biggest concern was the overall use of the property. Weddings had been held in a previous summer. A lot of use and ‘build’ to the property gave rise to the concerns about what the overall goal was for the build-out. Mike asked about the previous public comment. Tiffani indicated it had been included in the previous staff report and that no new comments had been received. Mike expressed interest in the comments. He noted the size of the structure had been reduced and the driveway had been left the same.

Mary asked about the barn materials. Agent Jeff Gallatin said it was wood-framed and wood siding, some sort of cedar siding similar to the house. He described it further. Jacob showed a picture that was submitted. Mary summarized it looked like a barn. Mike asked about the term ‘toy barn’. Mary responded it was storage building.

Jeff Gallatin said the staff report was pretty complete. He confirmed for Mike that the fence from S. Finley Point Rd. along the north was the property line. The trees cut opened up the view for the house [owners] across the street to the east, who were happy about that.

Mike questioned the need for a buffer plan. Jeff thought that was a good point. They were referencing the east and north. He could see where they might want something along Finley Point Road. How thick should a buffer be for that? Frank inquired about the purpose for the buffer strip. Tiffani replied it was a visual thing, given some of the comments received, to mitigate that impact. They weren’t saying to replant those trees that would be 50 feet in height. It could be something like a line of rose bushes or something a little more visually appealing than a barn. It was for the Board to decide. They could remove it if they didn’t feel it was necessary. Mary said it also depended on what the construction was. The picture looked great. She didn’t like the idea of a metal barn. Jeff supplied that the finishes on the house were actually colors that blended into the trees.

Public comment opened:

Joe and Tracy McDonald had been leasees of the Tribal lot to the south since something like 1967. The things done on the [subject parcel] had been very well done. It was slightly overbuilt. They were concerned about the view as they came off the road. He could see now that it would be an attractive barn rather than a steel shed. They were concerned about the water and the sewage because they thought it would be turned into a dance hall for weddings, given that two events had happened already. Jeff clarified that two of the owners’ kids had been married there

last summer. Joe said they didn't know what the kids would do. They were concerned about all of that.

Tracy mentioned they were concerned given the size of the other toy barns: the garage and the two boat houses. The garage was beautifully done but it was huge. What else would you need? What else was being stored up above when you had all that [storage] down below? Lots of people who wanted to build the big toy barns had bought pieces of property somewhere else and built their [inaudible wording]. Joe said the square footage was 3,200 square feet. Mike said it was staked out. Tracy said it was 40 by 80. Jeff indicated they'd reduced the square footage. It was under 2,000 square feet. Tracy said they felt a lot better about that. Joe noted that Eric mentioned 1,200 square feet on the phone, so it increased from that. He hoped it wasn't approved.

Tracy said they were held to strict regulations in what they could do. That's why the rules were in place. Her concern centered on was this a rule or not? This was a brand-new structure. Eric knew the rules when he bought the property. He was now applying for a variance to them? Steve explained Eric made modifications to stay within the rules. Tracy felt good about that. Frank described that the rules included provisions for variances, conditional uses and zoning conformance. These involved review and oversight. Tiffani clarified they weren't applying for a variance. This was a conditional use. They had reduced the size. Tracy understood now that this wasn't a variance, and they'd met them part way. Water and sewer weren't being done, which had also been a concern. It would look really nice. Mary said it was good that Tracy asked so she knew now what they were here to do. Tracy replied the Tribes had a really tight ship and they'd held to it for 60-some years. Joe explained they had wanted to build another building and this was not allowed. Tracy said they were maxed out for what the Tribes allowed on their 5 acres. They wanted to keep the rich eagle and deer habitat on the Point. When you dropped a lot of trees, you lost that.

Mike agreed it was a huge house, and the guest house was above. He didn't think it was realistic to say you'd have to tear down a big house to put a toilet in the barn. Tiffani explained they were restricted by density. That condition was included because the applicant didn't have the density to have a bathroom in the barn. Steve referred to previous discussions over density. Mike referred to definitions of a dwelling. Frank suggested an alternative change. Steve asked Jacob if he'd found a problem with making a statement that allowed a bathroom as long as it was restricted to not use it as a dwelling. Jacob answered they had an issue with the definition that might give trouble with that. He liked Frank's idea of leaving the possibility for another approval in the future that would allow it. For now, the definition said a structure that was intended for human occupancy or use that had a piped water supply was a dwelling unit. That gave them trouble. They could leave it open for them to come back if something [with that definition changed] in the future.

Pg. 9, condition #4 as altered by the group: Change to read, "No sewer or water facilities are to be allowed to be installed in the toy barn, unless a special approval was granted for a 3rd non-dwelling structure with water and sewer facilities, and further review and approval is obtained from the Lake County Planning Department and the Lake County Environmental Health Department." Jacob noted if they looked more closely at the density, the density might exist to have another dwelling unit. They would have to get Commissioner approval to do that. Steve

verified with Jacob that the definition for density was in this zoning district. Jacob reminded that the definition in the recommended density map and attached text [of the Growth Policy, appendix C] had been fixed to allow for bathrooms in outbuildings. Steve indicated they should make a special note to look at the Finley Point dwelling definition. The Board further discussed past situations.

For pg. 9, condition #3, Steve asked if the neighbor to the north commented. Tiffani said no. They'd received comment from the northern neighbors in 2018 about the visual when the guest house was put in. They required a buffer for that last project, which was down lower and up against the north property line. Steve suggested deleting condition #3. Mike agreed there wasn't a need for it. Tracy said they'd put electricity up top for relatives to park motor homes. She thought Joe talked to Eric about whether [the structure] would block their view from that spot because they could see everything, and after Eric built his big place down below, they thought they'd still have the view up above. She believed this would be closer to Finley Point Road. Jeff confirmed it was as close to Finley Point Road as the setback allowed. He'd looked per Eric's request, and most of [the McDonald's] area looked past the front of the barn, up the narrows. He didn't think the barn would block that. Tracy said they were concerned about that. They were going to walk the property line with Eric but it was rainy and crazy and hadn't happened. They just wanted to make sure it wasn't another huge structure on top blocking everything, and that it wasn't being built for a party house instead of a toy barn. The McDonalds had gotten a lot of flak from the other neighbors for not controlling the wedding events, even though they hadn't been there. The Board agreed to delete condition #3 on pg. 9.

Steve adjusted pg. 7, item 4.iii: Replace 'techniques are' with 'plan is'.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the conditional use with changes in the findings of fact and the changes in the conditions and terms as discussed. Motion carried, all in favor.

Mike and Jeff agreed the Sprunks would need a variance for any additional coverage.

MINUTES: April 10, 2019 (4:43 pm)

Motion made by Steve Rosso, and seconded by Mary Jensen, to approve the April 10, 2019 meeting minutes as written. Motion carried, 4 in favor (Don Patterson, Steve Rosso, Mary Jensen, Mike McKee) and one abstention (Frank Mutch).

OTHER BUSINESS (4:45 pm)

None.

Don Patterson, chair, adjourned the meeting at 4:45 pm.